



The Corporate Transparency Act's Impact on the Real Estate Industry: What You Need to Know to Comply

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Many U.S. businesses will soon be required to disclose information on their “beneficial owners” under regulations issued (and to be issued) by the Financial Crimes Enforcement Network (FinCEN) under the federal Corporate Transparency Act (CTA). This disclosure obligation begins on January 1, 2024, for entities formed on or after that date and will be required within 30 days after the new entity is formed. For existing entities (those formed prior to January 1, 2024), the same disclosures must be made no later than January 1, 2025. The regulations are found at 31 C.F.R. § 1010.380 (the “Rule”). The goal of the CTA is to prevent and combat money laundering, terrorist financing, corruption, tax fraud, and other illicit activity by requiring companies to disclose beneficial ownership information, or BOI, to FinCEN, a bureau of the U.S. Department of the Treasury.

The Rule will likely impose a heavier compliance burden on real estate businesses with numerous legal entities that own and operate real property across all asset classes. While the CTA and its implementing regulations are not targeted to real estate businesses, this article focuses on the impact on the real estate industry. As discussed below, certain types of entities will be exempt from the reporting requirements; however, these exemptions will not apply to many typical real estate limited liability companies and partnerships formed to own and operate commercial properties.

What entities must report information to FinCEN?

Under the Rule, a “reporting company” must provide information to FinCEN. The CTA’s definition of a reporting company is written broadly to capture many forms of business organizations, including domestic entities formed by a filing with a secretary of state’s office, such as an LLC, LP or LLP, as well as most foreign entities that are registered to do business in a state. In broad terms, if the legal

entity exists as a result of a filing with a state or tribal authority, then it is potentially a reporting company. The Rule contains 23 exemptions for certain types of businesses that will not be considered “reporting companies” (see below), and they should be studied for potential applicability; however, these exemptions will not apply to many LLCs and similar entities that own commercial real estate.

What must be disclosed?

The CTA requires reporting companies to supply three categories of information: information about the entity, BOI, and information about the company applicant.

Each reporting company will have to provide information on its “beneficial owners” as well as the “company applicants” involved in forming the entity. The term “beneficial owners” means those individuals who, directly or indirectly, (i) exercise substantial control over the entity (this will include most senior officers of the entity); and (ii) own or control not less than 25% of the entity’s ownership interests. “Ownership interests” include capital and profit interests, convertible instruments, and rights to subscribe to or purchase shares. The term “company applicant” means the individual who directly files the document that creates a reporting company, as well as the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved. For example, the lawyer who drafted the company’s formation documents and the paralegal who filed the same with a secretary of state would both be company applicants.

The initial report filed with FinCEN must contain the following:

- The reporting company’s legal name, any trade name, complete current address, the jurisdiction of its formation, and its IRS Taxpayer Identification Number;
- For each beneficial owner of the entity, the individual’s full legal name, date of birth, current residential address, a unique identifying number from a document such as a state-issued driver’s license, U.S. or foreign passport, the issuing jurisdiction of the document, and an image of the document

from which the unique identifying number was obtained; and

- Substantially similar information must be provided for each individual who is a company applicant for the reporting company.

The nature of the personal information required, as well as the requirement for providing a copy of an identifying document, raises concerns about the security of the information provided. As noted below, FinCEN is still working on developing the infrastructure to collect and secure this information, together with the rules as to how the reported information can be accessed by certain statutorily authorized agencies or entities.

Is there an obligation to update previously reported information?

If any information on an application or report changes, an updated FinCEN report must be filed within 30 calendar days after the change occurred. For example, if a beneficial owner's address changes, then such owner's change of address must be timely reported to FinCEN. Similarly, if any report was inaccurate, the reporting company must file a corrected report within 30 calendar days after the reporting company becomes aware or has reason to know of the inaccuracy.

What if an individual is a beneficial owner of numerous entities?

The Rule provides that a reporting company, as well as an individual, may obtain a FinCEN identifier by submitting to FinCEN an application containing the information about the applicable entity or individual. An individual's FinCEN identifier may be used by a reporting company in lieu of reporting that individual's BOI (as long as it remains correct). The availability of the FinCEN identifier should make reporting easier for individuals who are beneficial owners of numerous entities, and who do not want to provide sensitive personal information multiple times.

How will the information be reported?

FinCEN continues to develop the infrastructure to administer these reporting requirements in accordance with the strict security and confidentiality requirements of the CTA, including the information technology system that will be used to store beneficial ownership information. However, it is now known that the information will be reported by e-filing through the Beneficial Ownership Secure System (BOSS). The target date for the system to begin accepting BOI reports is January 1, 2024, which is the effective date of the Rule.

How will BOI be used?

The CTA, as well as a proposed rule issued December 15, 2022 (the “Proposed Rule”), would authorize FinCEN to disclose BOI to a limited list of recipients. These entities include:

- Federal agencies engaged in national security, intelligence, or law enforcement activity, for use in such activity;
- State and local agencies authorized by a court to obtain the information as part of a criminal or civil investigation;
- Federal agencies acting on behalf of foreign law enforcement officials or judges;
- Financial institutions subject to customer due diligence (CDD) requirements, with the consent of the reporting company;
- Certain federal regulatory agencies that supervise financial institutions, in order to assess financial institution compliance with CDD requirements; and
- The Department of the Treasury.

What types of entities are exempt from the reporting requirements?

The Rule identifies 23 types of entities that are exempt from the BOI reporting requirements, such as banks, insurance companies, publicly traded companies, pooled investment vehicles, tax-exempt entities including 501(c) organizations, tax-exempt political

organizations, large operating companies (more than 20 full-time employees in the U.S., with income tax returns showing more than \$5 million in domestic gross receipts or sales, and with an operating presence at a physical office in the U.S.), and subsidiaries of exempt entities (including both direct and indirect subsidiaries of such entities). However, these exemptions are likely not applicable to many for-profit real estate businesses.

What are the penalties for failure to report?

Any person who willfully provides false information to FinCEN, or willfully fails to report information to FinCEN as required: (i) will be liable for a civil penalty of not more than \$500 for each day that the violation continues or has not been remedied; and (ii) may be fined not more than \$10,000, imprisoned for not more than two years, or both. The Rule does provide a safe harbor provision for voluntarily and promptly correcting an inaccurate report within 90 days.

What are the next steps?

Later this year, it is expected that FinCEN will issue a final version of the Proposed Rule regarding access to BOI and the security of BOI information. FinCEN plans to issue a third rule, to be effective no later than January 1, 2025, under which the existing rule regarding CDD requirements for financial institutions under the CTA will be brought into conformance with the Rule—with the goal of reducing the compliance burden on financial institutions and legal entity customers.

The CTA has important implications for the real estate industry, and in fact for all businesses, including banks and other financial institutions that will need to access BOI. Accordingly, businesses need to become familiar with the CTA and the Rule and take proactive steps to ensure compliance. There are exceptions to the reporting obligations under the CTA, and it is important to determine, for each entity owned by a company, whether a reporting exemption exists.

This article identifies key provisions of the Rule but is not intended as a comprehensive summary. If you have any questions about this

article, please contact the authors or any attorney with Frost Brown Todd's [Corporate Transparency Act Team](#).

Frost Brown Todd's Corporate Transparency Act Team is staying up to date on the important rule changes that will likely have significant impacts on your business operations. Click below to read the latest information about the Corporate Transparency Act.

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- [**FinCEN Announces Proposed Solution to Disclosure Dilemma in the Corporate Transparency Act**](#)
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